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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

DANIEL ALONZO,

Defendant and Appellant.

B170483

(Los Angeles County
Super. Ct. No. VA 076096)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Thomas I. McKnew, Jr., Judge. Affirmed and remanded with directions.

Jennevee H. De Guzman, under appointment by the Court of Appeal, for
Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and
Karen Bissonnette, Deputy Attorneys General, for Plaintiff and Respondent.

When defendant's girlfriend (the mother of his child) wisely decided to leave him, he beat her up and stabbed her in the arm with a pair of scissors. A jury convicted him of assault with a deadly weapon (count 1) and inflicting injury on a cohabitant (count 2). The panel sustained a weapon allegation as to count 2. After the verdict, defendant admitted a prior robbery conviction. The trial court imposed a 13-year second strike sentence.

Defendant's sole contention on appeal is that the trial court failed to adequately advise him of his rights as to the prior conviction and failed to secure adequate waivers of those rights. The record demonstrates that the trial court took a jury waiver, but gave no more advisements and took no more waivers. The People concede as much, but argue that the totality of the circumstances demonstrate an intelligent and voluntary admission of the prior conviction.

We issued an opinion, vacating the admission and remanding for further proceedings. We relied on *People v. Van Buren* (2001) 93 Cal.App.4th 875, in which the trial court informed the defendant that he had “the right to have a trial on that issue, that it would be tried to [the court], and [asked if he] wish[ed] to waive that right[.]” (*Id.* at p. 883.) The defendant answered in the affirmative and the trial court accepted the plea.

Van Buren held that the deficiencies were “comparable to the deficiencies that other appellate courts have found serious enough to invalidate an admission of a prior conviction. [Citations.]” (*People v. Van Buren, supra*, 93 Cal.App.4th at p. 884.)

Shortly after we issued our opinion, the California Supreme Court filed *People v. Mosby* (2004) 33 Cal.4th 353 specifically disapproving *Van Buren* and holding that the totality of the circumstances must be considered to determine whether defendant was fully aware of his other rights and voluntarily relinquished them.

We granted the People's request for a rehearing.

The bottom line in *Mosby* is that, under the totality of the circumstances, a defendant who has just been through a jury trial and who, in admitting a prior conviction, is apprised only of his right to a jury, is aware of his other rights, especially

(as here) if he did not testify at the trial and watched as his counsel cross-examined the prosecution witnesses.

Seeing no difference between this matter and *Mosby*, we hold that defendant entered a knowing and voluntary admission of the prior conviction.

The trial court declined to impose sentence on the count 1 assault. Although defendant was convicted of that crime, the abstract of judgment makes no mention of it. We will remand for issuance of a new abstract of judgment showing the conviction.

DISPOSITION

The judgment is affirmed. The matter is remanded for issuance of a corrected abstract of judgment showing conviction of assault with a deadly weapon (count 1) and a Penal Code section 654 stay as to that count. The corrected abstract of judgment is to be sent to the Department of Corrections.

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ORTEGA, J.

We concur:

SPENCER, P.J.

VOGEL, J.